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Docket Administrator
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In re Application of)
SHAO et al.)
Application No. 09/464,811) DECISION ON PETITION
Filed: December 17, 1999)
For: Integration of Low Dielectric Material in)
Semiconductor Circuit Structures)

This is a decision on the petition, filed July 28, 2001 under 37 CFR 1.144, to review the examiner's requirement for restriction in the above-identified application.

The petition is **GRANTED**.

Petitioner complains that the requirement for restriction issued by the examiner on May 17, 2000, was improper and requests that it be withdrawn. Petitioner asserts that the examiner erred in restricting between claims directed to a semiconductor device (Group I) and a method for making a semiconductor device (Group II) in that the "product as claimed (Group I) cannot be made by another and materially different process than that covered by the Group II claims."

In the Office action of May 17, 2000, the examiner asserted that "the device of Group I could be made by selectively depositing the second insulative layer, so that no etching is necessary after the depositing of the upper level of interconnect members over said second insulating layer." In response, applicant asserted that "any such selective deposition would correspond to deposition of a 'third layer,' because the examiner's proposed process would require deposition and selective removal, i.e. etching, of a second layer (as recited in the claims of Group II) in order to selectively deposit the 'third' layer." The examiner did not find applicant's argument persuasive, stating that "the above [selectively depositing a layer so that etching is not necessary] does in fact propose another method for producing the semiconductor device as claimed."

Petitioner argues that the examiner failed to set forth a viable method for making the claimed semiconductor device wherein etching of the second insulator level is not necessary. Petitioner argues that a "selectively depositing" step would either be covered by the Group II claims or result in a surface which is unsuitable for depositing and patterning of interconnect members.

A review of the application file indicates that the examiner did not adequately address petitioner's arguments. As petitioner correctly points out, a mere statement that applicant's traversal is not found persuasive is wholly deficient as a basis for making the requirement final. Accordingly, the application is hereby remanded to the examiner in charge of the application with instruction to withdraw the requirement for restriction issued on May 17, 2000 and made final on January 3, 2001.

In view of the above, **PROSECUTION IS HEREBY REOPENED**. The fees paid for the Notice of Appeal and the Appeal Brief will be applied to a later appeal on the same application.

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